



September 17, 2013

Regulations Division
Office of General Counsel
Department of Housing and Urban Development
541 7th Street SW
Room 10276
Washington, DC 20410-0001

RE: RIN 2501-AD33
Docket No. FR-5173-P-01, Affirmatively Furthering Fair Housing

To Whom It May Concern:

We are writing on behalf of the National Multi Housing Council (NMHC) the National Apartment Association (NAA) and the National Leased Housing Association (NLHA) in response to the Department of Housing and Urban Development's July 19, 2013 request for comments relative to the Proposed Rule on Affirmatively Furthering Fair Housing (AFFH).

NMHC/NAA represent the nation's leading firms participating in the multifamily rental housing industry. Our combined memberships engage in all aspects of the apartment industry, including ownership, development, management and finance. NMHC represents the principal officers of the apartment industry's largest and most prominent firms. NAA is a federation of 170 state and local apartment associations comprised of approximately 60,000 multifamily housing companies representing more than 6.6 million apartment homes throughout the United States and Canada. The National Leased Housing Association (NLHA) is a national organization dedicated to the provision and maintenance of affordable rental housing for all Americans. NLHA is a vital and effective advocate for nearly 450 member organizations, including developers, owners, managers, public housing authorities, nonprofit sponsors and syndicators involved in government related rental housing

There appears to be general consensus by HUD, program participants, advocates and GAO that the current practices and plans as required under the law to identify impediments to fair housing and develop plans to overcome them are not effectively being utilized. This proposal provides new tools to help guide program participants and communities fulfill the promise of the Fair Housing Act. It proposes to strengthen AFFH implementation by providing program participants, specifically Public Housing Agencies (PHA's), state and local governments and insular areas with racial and socioeconomic data to assist in fair housing planning and to institute a revised mechanism for HUD review and oversight of this planning. As stated, HUD anticipates that the new AFFH rule will empower local decision making and foster smart government and better housing policies.

A more informed community and local government can create opportunities for multifamily development if properly applied. This is especially true in geographic areas where there is the existence of exclusionary zoning to prevent multifamily properties from being built. To that end we offer our support. We are strongly in favor of efforts to eradicate exclusionary zoning, reduce segregation and increase housing opportunities for all. However, we also recognize that this proposal could result in unintended consequences which must be addressed before further action is taken.

This proposal is very broad and complex and its impacts cannot be fully understood without additional analysis. While not directly impacted by the regulatory obligations this rule imposes on program participants, our members are concerned about the potential for indirect negative consequences such as the additional financial burden that the proposal will place upon state and local governments at a time when budgets are already constrained as well as the use of data for purposes outside of the scope of this rule. Specifically our concerns include the following:

1. HUD is imposing massive additional planning burdens on public agencies. The rule itself indicates that the total planning obligation will require an additional 1.6 million hours of work by these agencies. Moving forward with an unfunded mandate like this will make it harder for these agencies, which are already overtaxed and understaffed, to meet their present service levels.
2. The planning process proposed may allow HUD to second-guess planning decisions made by local agencies. It would be disastrous to the multifamily industry if after significant site acquisition and planning expenses were undertaken, HUD could deny or override local decisions. HUD needs to make clear that it will not take any action against a public agency that will jeopardize decisions and actions undertaken by the private sector.
3. A critical part of HUD's proposal is to provide additional demographic data (including a variety of new measurement statistics) to assist public agencies in the planning process. While HUD has provided guidance about the mathematical concepts behind these new statistics, we are concerned about the practical consequences of these measurements. HUD should provide more detailed modeling – including actual case studies – to show how these new measurements would work in practice. Unavoidably, agencies “work to the statistic” and HUD should not proceed further with this rule until it provides clearer information about how these statistics would affect actual planning decisions.
4. The proper focus on this process is to improve the planning process and to make it more difficult for public agencies to pursue exclusionary zoning policies. HUD should make clear that the process should not impose additional burdens on private parties or to increase enforcement activities against them. Specifically, HUD should make clear that the new statistical measurements are not intended to apply to private persons and cannot be used to measure their fair housing activities or to otherwise impose additional fair housing obligations onto private parties (including HUD owners). In the absence of assurances that the new planning process (and statistical measurements) will not be applied against private persons, HUD should not proceed to finalize this rule.

Our concerns largely stem from the fact that there is a short supply of rental housing in the country; exacerbated by the recent overall housing crisis. To meet existing demand for apartments, the market requires at least 300,000 new apartments to be built every year. However, the housing market collapse and economic recession brought apartment construction to a near halt for a number of years. In fact, in 2009, the U.S. Census Bureau reported a 50-year low in starts of new apartments—just 97,300. To implement a new process without a full understanding of the impacts to the overall housing industry is of great concern.

Apartment construction is ramping up as the economy continues to recover. In 2012, 157,600 new apartments were built, marking a dramatic increase from low levels of construction. This supply-constrained market comes at a time when apartment demand is up significantly. In fact, nearly a million more people chose to live in apartments in 2012 than 2011. Changing lifestyle preferences and major demographic shifts are driving growing apartment demand.

This proposal will most certainly add additional regulatory layers to program participants and costs to meet those stated obligations. To take action that will impose new costs on tight budgets will most certainly result in development delays and overall disruption in the market.

We encourage a lengthier review of this proposal and its potential for unintended consequences. As an alternative we also encourage additional consideration for how the current program can be better enforced.

Thank you for your consideration.

Sincerely,



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